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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,042	10/29/2003	Maya Benson	CE00532UM	6040
20280	7590	05/02/2007		
MOTOROLA INC 600 NORTH US HIGHWAY 45 ROOM AS437 LIBERTYVILLE, IL 60048-5343			EXAMINER RAMPURIA, SHARAD K	
			ART UNIT	PAPER NUMBER
			2617	
			MAIL DATE	DELIVERY MODE
			05/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/696,042

Applicant(s)

BENSON ET AL.

Examiner

Sharad Rampuria

Art Unit

2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Please see appended folio.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


GEORGE ENG
SUPERVISORY PATENT EXAMINER

Response to Remarks

Applicant's arguments filed on 04/03/2007 have been fully considered but they are not persuasive.

Relating to Claim 5:

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (e.g., environmental conditions (second paragraph of Pg.9, in the response filed on 4/3/07)) **are not recited in the rejected claim(s)**. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Since GRUBE teaches, "Having obtained the distance relationship, the **communication resource controller** then determines whether that relationship is favorable to a predetermined threshold (202). The predetermined threshold is typically a distance parameter, which is derived from the transmitting power of the communication units when in a direct mode... If the distance relationship is favorable to the predetermined threshold (202), **the communication resource controller transmits a mode change message**, or a direct mode message, to the communication units (203). The mode change message indicates that the units should switch to, or operate in, a direct mode of operation." (Grube, Col.3; 18-34), which **corresponds** to the claimed limitation as "At a base station serving the first mobile station, if radio propagation conditions between the first mobile station and the second mobile station are sufficiently good, instructing the first mobile station and the second mobile station to establish direct communication." Thus,

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determining the predetermined threshold at the communication resource controller. (Grube, Col.3; 18-34), is exactly as applicant is rely upon, the determination at a base station (e.g. determination at a base station; Bensen et al., US 20040121766, ¶ 0040), that certainly, anticipated by **GRUBE**. Hence, it is believed that ***GRUBE still teaches the claimed limitations.***

Moreover, **GRUBE** teaches, " The predetermined threshold is typically a distance parameter which is derived from the transmitting power of the communication units when in a direct mode." (Grube, Col.3; 18-23), which *corresponds* to the claimed limitation as "the radio propagation conditions between the first mobile station and the second mobile station are sufficiently good." Thus, the transmitting power of the communication units. (Grube, Col.3; 18-23), is exactly as applicant is rely upon, the radio propagation conditions (e.g. the radio propagation conditions; Bensen et al., US 20040121766, ¶ 0040), that certainly, anticipated by **GRUBE**. Hence, it is believed that ***GRUBE still teaches the claimed limitations.***

The above arguments also recites for the claims 14, 17, consequently the response is the same explanation as set forth above with regard to claim 5.

Because the remaining claims depend directly/indirectly, from one of the independent claims discussed above, consequently the response is the same explanation as set forth above.

With the intention of that explanation, it is believed and as enlighten above, the refutation are sustained.

Sharad Rampuria
Sharad Rampuria
Patent Examiner
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